

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT ("First Amendment"), made and entered into this ____ day of _____, 2009 by and between the City of Frisco, Texas, a municipal corporation chartered as a home-rule city, ("Frisco") and George Purefoy ("Purefoy"), both of which parties hereto understand and agree as follows:

WHEREAS, Frisco and Purefoy entered into that certain Employment Agreement, dated February 5, 2003 ("Agreement"); and

WHEREAS, Frisco desires to continue employing Purefoy as City Manager of Frisco as provided by the Frisco City Charter; and

WHEREAS, Purefoy desires to continue accepting employment as City Manager of Frisco on the terms outlined herein; and

WHEREAS, Purefoy and Frisco desire to amend the Agreement on the terms outlined herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and hereinbefore stated, the parties hereto agree as follows:

1. **Applicability of First Amendment.** Except as otherwise stated herein, the terms defined in the Agreement will have the same definition and meaning when utilized in this First Amendment.

2. **Amendment to Agreement, Section 3 (Termination and Severance Pay).** Section 3 (Termination and Severance Pay) is hereby amended as follows:

“ . . .

E. In the event Purefoy is terminated as set forth in this Section, Purefoy shall have the right to an appeals process as set forth in the then existing City Charter.”

3. **Amendment to Agreement, Section 4 (Salary).** Section 4 (Salary) is hereby amended as follows:

“ . . .

In addition, Purefoy may receive annually additional income based on the following performance based program. Beginning January 1, 2003 calendar year, Purefoy's evaluation instrument (based on a thirty six (36) point system) shall be a measure for paying additional income based upon the following performance

program and amounts as set forth below; said sum to be payable in one (1) lump sum or added to his Annual Base Salary following the evaluation and consistent with the City Council policies.

...

In addition, Purefoy may receive annually additional income based upon his successful performance as determined by the appraisal. . . .”

4. **Amendment to Agreement, Section 6 (Automobile).** Section 6 (Automobile) is hereby amended as follows:

“Purefoy’s duties require that he shall have the use of an automobile. Frisco agrees to pay to Purefoy, during the term of this Agreement and in addition to his Annual Base Salary and benefits herein provided the sum of Ten Thousand, Six Hundred and No/100 Dollars (\$10,600.00) per year, payable in equal monthly installments, as a car allowance. Purefoy shall acquire and maintain an automobile during the term of this Agreement, which shall be available for Purefoy’s exclusive and unrestricted use in the performance of his duties hereunder. Purefoy shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such automobile and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular replacement of said automobile.”

5. **Amendment to Agreement, Section 10 (Deferred Compensation).** Section 10 (Deferred Compensation) is hereby amended as follows:

“Additional Deferred Income. Beginning January 5, 2008 and each January 5 thereafter through January 5, 2012, the City Council will deposit Ten Thousand Dollars (\$10,000.00) annually in an account established by the City Council (“Deferred Income Account”). All sums deposited into the Deferred Income Account may be invested by Purefoy in his sole discretion.

Purefoy may not withdraw funds from the Deferred Income Account until January 2013 when Purefoy may withdraw all the funds in the Deferred Income Account subject to the following paragraph. . . .”

6. **Amendment to Agreement, Section 11 (Health Insurance and Annual Medical Examination).** Section 11 (Health Insurance and Annual Medical Examination) is hereby amended as follows:

“Frisco agrees to provide hospitalization, surgical and comprehensive medical insurance for Purefoy, his wife, and his children under the age of twenty five (25) living at home with him, and to contribute to said premium at the same

level as any other Frisco employee, such benefits to be equal to that which is provided all other Frisco employees.”

7. **Entire Third Amendment.** This First Amendment contains the entire First Amendment of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

8. **Venue.** This First Amendment shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

9. **Consideration.** This First Amendment is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

10. **Counterparts.** This First Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

11. **Authority to Execute.** The individuals executing this First Amendment on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this First Amendment to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this First Amendment in order for the same to be an authorized and binding First Amendment on the party for whom the individual is signing this First Amendment and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12. **Savings/Severability.** In case any one or more of the provisions contained in this First Amendment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this First Amendment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. **Representations.** Each signatory represents this First Amendment has been read by the party for which this First Amendment is executed and that such party has had an opportunity to confer with its counsel.

14. **Waiver.** Waiver by any party of any breach of this First Amendment, or the failure of either party to enforce any of the provisions of this First Amendment, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

15. **Miscellaneous Drafting Provisions.** This First Amendment shall be deemed

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drafted equally by all parties hereto. The language of all parts of this First Amendment shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this First Amendment are for the convenience of the parties and are not intended to be used in construing this document.

16. **Controlling Agreement.** This First Amendment shall be and is hereby incorporated into the Agreement for all intents and purposes, and except as otherwise stated herein, the terms, provisions and definitions of the Agreement shall apply to this First Amendment. This First Amendment may not be modified without the written consent of Frisco and Purefoy. To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.

17. **Effective Date.** This First Amendment shall be effective as of January 1, 2009.

IN WITNESS WHEREOF, Frisco has caused this First Amendment to be signed and executed on its behalf by its Mayor, duly attested by its City Secretary, and Purefoy has signed and executed this Agreement, both in duplicate, on the day and year first above written.

CITY OF FRISCO, TEXAS

Maher Maso, Mayor

George Purefoy, City Manager

ATTEST:

Jenny Page, City Secretary